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Federal Communications Commission  
Office of the Secretary

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June 3, 1992

OF COUNSEL  
TOBEY B. MARZOUK

\* ADMITTED VA ONLY

**BY HAND DELIVERY**

Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

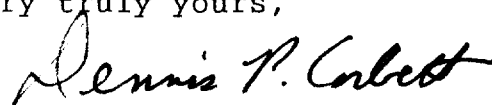
Re: BPH-910213ME  
MM Docket No. 92-106  
Bethany Beach, Delaware

Dear Ms. Searcy:

On behalf of Jeffery Scott, applicant in the above-referenced proceeding for a new FM station on Channel 278A at Bethany Beach, Delaware, I am transmitting herewith an original and six copies of his Petition for Leave to Amend and Amendment.

Should there be any questions concerning this matter, please contact the undersigned.

Very truly yours,



Dennis P. Corbett

DPC:kb  
Enclosures

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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

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JUN - 3 1992

Federal Communications Commission  
Office of the Secretary

In re Applications of	)	MM Docket No. 92-106
	)	
JEFFERY SCOTT	)	File No. BPH-910213ME
	)	
EICHER COMMUNICATIONS, INC.	)	File No. BPH-910213MF
	)	
For Construction Permit for a	)	
New FM Station on Channel 278A	)	
in Bethany Beach, Delaware	)	

To: The Honorable Richard L. Sippel  
Administrative Law Judge

**PETITION FOR LEAVE TO AMEND**

Jeffery Scott ("Scott"), by his attorney, hereby requests leave to amend his above-captioned application. In support whereof, the following is shown.

By Hearing Designation Order, DA 92-559, released May 14, 1992 ("HDO"), the Commission set Scott's application and that of Eicher Communications, Inc. ("Eicher") for comparative hearing. Today, the deadline for filing Notices of Appearance in this proceeding, Scott and Eicher are filing a Joint Request for Approval of Settlement Agreement and a Settlement Agreement that calls for the dismissal of Eicher's application and the grant of Scott's application.

Paragraph 5 of the HDO recites that Scott is proposing to locate his transmitting antenna on an existing tower and requires Scott to address the issue of how he "propose[s] to

resolve any RF exposure to workers" on his proposed tower. As a matter of record, it should be pointed out that Scott timely filed an amendment to his application on May 16, 1991 to relocate his transmitter site. See Paragraph 2 of the HDO. At the amended site, Scott proposes to construct a new tower, not to locate on an existing tower as he had originally proposed. In any event, the amendment submitted herewith notes that Scott's application is categorically excluded from environmental processing and addresses the issue of general public and worker safety with respect to RF radiation, thereby resolving the concerns expressed in the HDO. In particular, Scott commits to shut down station operations as necessary to protect workers who climb the tower.<sup>1/</sup>

By this amendment, Scott also requests, in conjunction with the Scott/Eicher Settlement Agreement, permission to withdraw both his integration proposal and his proposal to make

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<sup>1/</sup> Paragraph 5 of the HDO provides that if the Mass Media Bureau determines, on the basis of this amendment, that Scott's application will not have a significant impact upon the quality of the human environment, "the contingent environmental issue shall be deleted and the presiding judge shall thereafter not consider the environmental effects of the proposal[]." It is Scott's understanding, based upon this language in the HDO, that deletion of the contingent environmental issue will be automatic if the Bureau makes the requisite determination. Scott is for that reason not submitting concurrently herewith a separate petition to delete the contingent environmental issue. Scott will submit such a petition to delete if it is deemed necessary for any reason.

his interest in Great Scott Broadcasting nonattributable.<sup>2/</sup> In its 1990 revision of certain aspects of the comparative hearing process, the Commission made clear that it would permit the prevailing applicant in a "global" settlement agreement to withdraw divestiture and integration proposals in conjunction with a Settlement Agreement, so long as the Settlement Agreement was filed by the Notice of Appearance deadline.<sup>3/</sup> This policy was viewed as promoting settlement. Scott is making such withdrawals by this amendment.

With respect to divestiture of his ownership interest in Station WZBH(FM), Georgetown, Delaware, Scott recites his willingness to accept the condition set out in Paragraph 13 of the HDO, under which he must come into compliance with 47 C.F.R. § 73.3555 with respect to Station WZBH(FM) prior to commencement of program test authority. Scott makes clear, however, that if 47 C.F.R. § 73.3555, as in effect at the time of program test authority, permits continued ownership interest

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<sup>2/</sup> Because these withdrawal requests are made in conjunction with the Settlement Agreement, Scott's integration proposal and his proposal to make nonattributable his interest in Great Scott Broadcasting would both remain in place should the Settlement Agreement not be approved for any reason.

<sup>3/</sup> Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 157 (1990), recon. granted in part, FCC 91-154, released May 15, 1991. On reconsideration, the Commission extended the deadline for filing withdrawal of divestiture and integration proposals to the exhibit exchange date.

in WZBH(FM) as well as the new station at Bethany Beach, he will retain his ownership interest in WZBH(FM). See Revision of Radio Rules and Policies, MM Docket No. 91-140, FCC 92-97, released April 10, 1992 (adopting revisions in the Commission's duopoly rules).

Good cause clearly exists for acceptance of this amendment. Scott is responding in a timely fashion to a directive contained in Paragraph 12 of the HDO and is otherwise timely complying with the procedure outlined by the Commission for withdrawing and clarifying divestiture and integration proposals, in conjunction with a timely filed Settlement Agreement.

**CONCLUSION**

For the reasons set out above, acceptance of the amendment submitted herewith is respectfully requested.

Respectfully submitted,

JEFFERY SCOTT

By:   
Dennis P. Corbett

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June 3, 1992

His Attorney

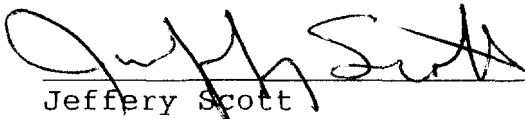
Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: MM Docket No. 92-106  
File No. BPH-910213ME  
Bethany Beach, Delaware

Dear Ms. Searcy:

The above-referenced application of Jeffery Scott for a construction permit to operate a new FM broadcast station on Channel 278A at Bethany Beach, Delaware, is hereby amended in accordance with the attached materials.

Respectfully submitted,

  
Jeffery Scott

Date: June 2, 1992

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Federal Communications Commission  
Office of the Secretary

AMENDMENT

The FCC Form 301 application of Jeffery Scott ("Scott") for a construction permit for a new FM broadcast station on Channel 278A at Bethany Beach, Delaware (File No. BPH-910213ME), is hereby amended in the following respects:

1. The Engineering Statement of Rubin, Bednarek Associates, Inc. relating to the environmental effects of my proposed station construction, including steps to be taken to protect workers from exposure to RF radiation, is attached hereto.

2. In conjunction with a "global" Settlement Agreement I have reached with Eicher Communications, Inc. ("Eicher") in MM Docket No. 92-106, I hereby withdraw both the integration proposal contained in Exhibit 6 of my application and my proposal, contained in the May 16, 1991 amendment to my application, to make my ownership interest in Great Scott Broadcasting nonattributable. These withdrawals are contingent on final grant of my application pursuant to the Settlement Agreement with Eicher.

3. I accept the condition set out in Paragraph 13 of the Hearing Designation Order in MM Docket No. 92-106. If, however, 47 C.F.R. § 73.3555, as it is in effect at the time of program test authority for the new station at Bethany Beach, permits my continued ownership of an interest in WZBH(FM), Georgetown, Delaware, I would retain my interest in WZBH(FM).



# RUBIN, BEDNAREK & ASSOCIATES, INC.

CONSULTING TELECOMMUNICATIONS ENGINEERS

1350 CONNECTICUT AVENUE, NW - SUITE 610

WASHINGTON, DC 20036

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## ENGINEERING STATEMENT

This Engineering Statement has been prepared on behalf of Jeffrey Scott in connection with paragraph 5 of the Hearing Designation Order in Mass Media Docket Number 92-106 released May 14, 1992 setting Scott's application (BPH-910213ME) for hearing. That paragraph relates to RF radiation.

The proposed construction will have no significant impact on the quality of the human environment and any FCC action with regard to this application would be categorically exempt from environmental processing under Section §1.1306 of the rules. The proposed transmitter site does not fall into any of the categories specified in Section §1.1307(a) of the rules and the use of high intensity obstruction lighting is not contemplated.

The proposed radio facility has been found to comply with the radio frequency protection guidelines contained in the ANSI C95.1-1982 standard (American National Standard Safety Levels With Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz) with respect to all areas accessible to workers on the ground or the general public.

Calculations were performed using the procedures found in OST Bulletin #65 ANSI guidelines to determine the height on the tower at which the ANSI maximum allowable radiation level of 1 mW/cm<sup>2</sup> would be exceeded. These calculations show the maximum permissible radio frequency radiation produced by the proposed antenna occurs at a point 83.25 meters above the base of the tower.

Calculations were also performed to determine the level of radiation that would actually reach the ground in the vicinity of the tower base. For the instant proposed antenna, the radiation at the ground and at 2 meters above the ground would be 0.0199 mW/cm<sup>2</sup> and 0.0207 mW/cm<sup>2</sup>. These radiation values are well below the ANSI values of 1 mW/cm<sup>2</sup>.

**RUBIN, BEDNAREK & ASSOCIATES, INC.**

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The following methodology was used to determine the values of radiation stated above.

To determine the height at which 1 mW/cm<sup>2</sup> would obtain:

$$R = \sqrt{\frac{(2.56)(1.64)(2)(3000)(1^2)(1000)}{4\pi(1\text{mW}/\text{cm}^2)}}$$

$$R = 1415.8 \text{ cm or } 14.16 \text{ m}$$

Since the lowest element of the proposed array will be at 97.41 meters AGL, the height AGL at which 1 mW/cm<sup>2</sup> will be found is 83.25 meters AGL.

To determine the value of radiation that would be found on the ground from the instant proposed antenna:

$$S = \frac{(2.56)(1.64)(2)(3000)(1^2)(1000)}{4\pi(10030)^2}$$

$$S = 0.0199 \text{ mW}/\text{cm}^2 \text{ at ground level}$$

$$S = 0.0207 \text{ mW}/\text{cm}^2 \text{ at } 2 \text{ mAGL}$$

where the center of radiation of the antenna is 100.3 mAGL

In those instances when the tower must be climbed above 83 meters, power to the antenna will be shut off when the 83 meter level has been reached and remain off until the climber has cleared that level on his way down.

**RUBIN, BEDNAREK & ASSOCIATES, INC.**

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**D E C L A R A T I O N**

MELVYN LIEBERMAN, declares and certifies as follows:


That he is associated with the firm of RUBIN, BEDNAREK & ASSOCIATES;

That this firm has been retained by Jeffrey Scott to prepare this engineering exhibit:

That his qualifications are a matter of record with the Federal Communications Commission;

That he has either prepared or directly supervised the preparation of all technical material contained in this engineering exhibit and that the facts stated in this amendment are true of his knowledge and belief except as to such statements as are herein stated to be on information and belief and as to such statements he believes them to be true.

May 29, 1992

  
Melvyn Lieberman

**CERTIFICATE OF SERVICE**

I, Katharine K. Bryant, do hereby certify that a copy of the foregoing "Petition for Leave to Amend and Amendment" was mailed, United States first-class mail, postage prepaid, this 3rd day of June, 1992 to the following:

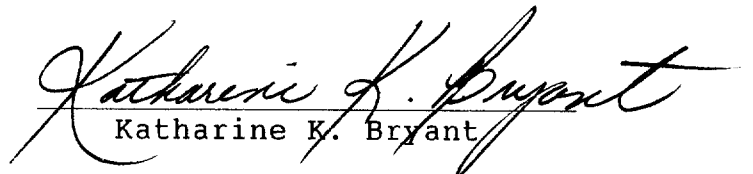
\*Honorable Richard L. Sippel  
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Counsel for Eicher Communications, Inc.

  
Katharine K. Bryant

\*By Hand Delivery